



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
MANPOWER AND RESERVE AFFAIRS  
111 ARMY PENTAGON  
WASHINGTON, DC 20310-0111

March 26, 2003

MEMORANDUM FOR DEPUTY CHIEF OF STAFF, G-1

SUBJECT: Civilian Personnel Function Exemption

Reference memorandum, Deputy Chief of Staff (DCS), G-1 (DAPE-ZA), subject: Third Wave Exemption Requests, 15 January 2003.

**Function.** This request includes civilian employees in the infrastructure and operating force performing civilian personnel functions covered by function code B720, Civilian Personnel Operations. Such work includes labor and employee relations, personnel staffing, position management and classification, and other personnel specialist work. Those positions associated with performing Management Headquarters functions will be addressed in a separate decision. For the purposes of this decision, I am deferring the issue pertaining to the sourcing options appropriate for personnel specialists until Personnel Transformation, and associated legislative and administrative reforms of the civilian personnel system realign authority and flexibility for decision making on hiring, promotions, and compensation to management, and until the process is re-engineered and streamlined.

The Assistant DCS, G-1 for Civilian Personnel Policy (DAPE-CP) also has funding responsibility for two institutional training organizations under functional code U620, Management of Civilian Institutional Training, Education & Development. The organizations are the Civilian Leadership Training Division of the Center for Army Leadership and the Army Management Staff College. Exemptions were not requested for these organizations.

**Career Progression.** Civilian career progression issues will be documented in a separate decision covering all career fields and functional areas. The decision will provide guidance necessary to make up the career progression tail necessary to sustain the inherently Governmental workforce in B720, Civilian Personnel Operations at a 1.6 to 1 ratio.

**Decision.** While civilian personnel operations cannot be characterized as a core Army competency under 10 U.S. Code, Section 3013, this function may not be divested as the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) and DCS, G-1 are responsible for it under the provisions of Title 5 U.S. Code. The Army's Civilian Personnel Operations Centers (CPOC)s have responsibility for classification decisions and staffing appointments for 118 Army installations worldwide, and are the effecting authority for all civilian personnel actions. Employees performing

labor relations specialist work at the Civilian Personnel Advisory Centers (CPAC)s negotiate agreements with the official representatives of local bargaining units that serve as governing documents on many substantive issues for all union represented employees at Army installations. Such examples of civilian personnel operations require the exercise of substantial discretion in applying Government authority. The limitations and scope of this decision are discussed in detail below.

Civilian personnel operations positions that are not allowed exemptions in this decision are authorized a delay in privatization, competition or alternatives until 2007 in order to meet substantial mission demands brought on by initiatives such as the: Realignment Task Force (RTF), Third Wave, Modern Defense Civilian Personnel Data System (MDCPDS) – Defense Information Management Human Resources System (DIMHRS) merger, Alternate Personnel System (APS) implementation, and Base Realignment and Closure (BRAC) 2005. The successful re-engineering of the civilian personnel process into a process that is more flexible and responsive to management, employees and prospective hires external to the Army is critical to the success of the above initiatives. The current civilian personnel process should be legislatively and administratively reformed under Personnel Transformation before sourcing options are considered.

**Requestor's Position on Issues.** The request claims that work at the GS-06 level and above of the civilian personnel operations function covered by code B720 must be performed by civilian Government officials. However, for code U620, the request indicates that no exemption is sought for the Civilian Leadership Training Division within the Center for Army Leadership (CAL) at Fort Leavenworth, Kansas, and the Army Management Staff College at Fort Belvoir, Virginia. The request states that the tasks and responsibilities of these organizations does not meet the intent of ASA (M&RA) Memorandum, Subject: Clarification of Standards of Review – Third Wave Exemption Requests, 1 November 2002, and will be included in the future Implementation Plan.

The request also provides substantial rationale in justification for delaying until the year 2007 any privatization competition or alternative for B720 positions not exempted in this decision. Reasons for delaying the conversion of remaining B720 positions include future impact on the civilian personnel operations function caused by initiatives such as the Third Wave, RTF, MDCPDS – DIMHRS merger, APS implementation, and BRAC 2005.

**Standard of review.** The senior HQDA functional official for a function must describe and substantiate specifically how preparation and implementation of a Third Wave implementation plan for each course of action poses substantial and specific risks to a core war-fighting mission of the Army (i.e., a core competency) or violates a

statutory requirement affecting a function. The following are risk factors to evaluate this request: force management risk; operational risk; future challenges; and institutional risk. How these risk criteria are applied may vary based on each course of action evaluated (i.e., A-76; alternatives to A-76; military conversions; transfer to another agency; divestiture). Therefore, exemption requests and decisions must assess the potentially adverse impact of each course of action.

The exemption request submitted by DCS, G-1 (DAPE-CP) provided information about career progression concerns that are recognized and will be addressed in a separate decision at the 1 to 1.6 head to tail ratio.

**Core Competency Relevant to Risk Issue.** The civilian personnel operations function is not one of the six recognized core competencies of the Army, as provided for in Army Field Manual 1 and The Army Plan: Shape the Security Environment (Deter Forward); Prompt Response; Forcible Entry Operations; Mobilize the Army; Sustained Land Dominance; or Support Civil Authority. Therefore, the risk criteria pertaining to the impact of an implementation plan or sourcing decision as it affects the Army's war fighting competencies are not directly relevant to civilian personnel operations.

**Statutory Requirements Relevant to Risk Issue.** While civilian personnel administration cannot be characterized as a core Army competency, this overall function may not be divested since the Assistant Secretary of the Army (Manpower and Reserve Affairs) and Deputy Chief of Staff, G-1 are responsible for it under the provisions of Title 5 U.S. Code, and internal delegation documents.

**Inherently Governmental Determination Relevant to Outsourcing Issue.** An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments while making decisions for the Government. An inherently Governmental function is so intimately related to the public interest as to require performance by Federal Government employees. This concept does not include providing advice to Federal Government officials.

The Army's Civilian Personnel Operations Centers (CPOC)s have responsibility for classification decisions and staffing appointments for 118 Army installations worldwide, and are the final authority for all civilian personnel actions. These actions include effecting employee appointments to the Federal service, promotions, details, reassignments, reinstatements, Reduction-in-Force actions, etc., and establishing pay, benefits, and entitlements for the civilian workforce. Section 2.101 of the Federal Acquisition Regulation describes as inherently governmental, functions which "Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order or otherwise" and "commission, appoint, direct or control officers or

employees of the United States." CPOC positions requiring the performance of civilian personnel operations at the GS-11 level and above have such responsibility and are inherently governmental.

Labor relations (LR) specialists at the CPACs negotiate agreements with the presidents of local bargaining units that serve as governing documents on many substantive issues for all union represented employees at Army installations. Specifically, LR specialists develop, negotiate, implement, and advise on local labor relations policy. Labor agreements negotiated by LR specialists govern a number of essential issues such as hours of duty, shift work, overtime/ holiday work, grievance procedure, alternate to traditional discipline procedure, etc. 5 U.S. Code, Section 7114 (b) (2) states, "The duty of an agency to negotiate in good faith includes the obligation to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment." CPAC LR specialists serve in this regard as the chief negotiator for management at Army installations. Positions requiring the performance of labor relations duties at the GS-11 level and above at CPACs are inherently governmental.

**Statutes Relevant to Sourcing Decision.** There are no statutes identified in the record that mandate that Government officials perform civilian personnel operations. Functions that are not inherently Governmental or otherwise exempted are subject to the standard statutory processes (10 U.S. Code, Sections 2461 and 8014 of the annual appropriations acts) that require public-private competition in all but a few circumstances, such as the exceptions for functions with 10 or fewer civilian employees and for use of the preferential procurement.

**Personal Services.** Where supervision by an official making inherently Governmental decisions in a management headquarters is required for effective performance of an activity in support of that decision maker, there is a basis for exempting that activity, whether advisory or clerical support, to avoid an inappropriate personal services contract. In addition, if persons supervised by an inherently Governmental decision maker in turn must supervise individuals supporting them in order to effectively perform the activity, a further extension of this exemption may be warranted.

In CPACs, where discretionary decision-making is conducted by personnel specialists and above performing labor relations duties, advisory, clerical and developmental staff in the organization will also be exempt in order to avoid inappropriate personal services contracts. Such employees are recognized in 5 U.S. Code, Section 7103 (a) (13) as "confidential employees" who are defined in the statute as "employees who act in a confidential capacity with respect to an individual who

formulates or effectuates management policies in the field of labor-management relations. Such employees may also not be included in bargaining units.

**Conflicts of Interest.** The request does not appear to raise any inherent conflict of interest issues pertaining to the Third Wave implementation plan courses of action. This exemption issue may be raised for consideration at any point during the course of implementation of Third Wave courses of action.

**Military Conversions.** The civilian personnel operations function does not contain any military; therefore this factor does not apply.

At enclosure are instructions on how to implement this decision in the Inventory of Commercial and Inherently Governmental Activities (including the Federal Activities Inventory Reform Act Inventory), to be developed by DCS, G-1 in coordination with our responsible staff officers.



Reginald J. Brown  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

Enclosures

## **CODING RULES for Civilian Personnel Management**

Apply to personnel in the following units:

- Civilian Personnel Field Agency (W40WAA)
- US Army Civilian Operations Center Management (W1J4AA)

### 1. Labor Relations

- a. Civilian GS-233 (Labor Relations Spec) in units:

Code L – Protected by law, statute, treaty or agreement

### 2. Personnel management

- a. Civilians in 200-series (Personnel) occupational series (Grades GS-11 or higher)

Code L – Protected by law, statute, treaty or agreement

### 3. Other employees in CPFA/COCM

- a. Authorized a delay until 2007

Code P – Pending Restructuring Decision